

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 8164 of 1996

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Petitioner(s)

Versus

AMRUTLAL HANSRAJBHAI & 3 - Respondent(s)

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Appearance :

MR KAMAL TRIVEDI, ADV.GENERAL with MS SANGEETA VISHEN, AGP for
Petitioner(s) : 1,1.2.1

MR UA TRIVEDI for MR RR TRIVEDI for Respondent(s) : 1 - 3.

Respondent(s) : 4 SERVED,

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 29/10/2007

ORAL JUDGMENT

The petitioners, State of Gujarat and the
Collector, Rajkoat have preferred the present
petition under Article 226 of the Constitution of

India against the judgment and order dated 17th February, 1995 made by the Gujarat Revenue Tribunal (hereinafter referred to as, **"the Tribunal"**) in Revision Application No.TEN.B.R. 49/1992. The subject matter of dispute is the transfer of land bearing Survey No.556 admeasuring 15-Acres-11-Gunthas situated at village Thanagalol, taluka Jetpur, District Rajkot made in favour of the respondents herein. According to the State Government, the said transfer was made in contravention of the provisions of the Saurashtra Gharkhed Tenancy Settlement and Agricultural Lands Ordinance, 1949 (hereinafter referred to as, **"the Ordinance"**).

On 6th March, 1986, by two different registered sale deeds the respondents purchased the aforesaid land Survey No.556 admeasuring 15-Acres-11-Gunthas from the owners of the land one Santokben Vashram and others. Pursuant to the said transfer the revenue entries nos.1787 and 1788 came to be made in the village form no.6 on 21st April, 1986 by the Talati-cum-Mantri, Thanagalol. The concerned Circle Officer, by endorsement made on 25th July, 1986, refused to

certify the said entry. According to the Circle Officer, the purchasers were not the agriculturists. He also instructed to issue notice upon the parties. It appears that pursuant to the said endorsement the Mamlatdar, Jetpur submitted his report that the purchasers had not produced any evidence of their being the agriculturists. Pursuant to the said report, the Deputy Collector, Gondal, in exercise of power of suo motu revision, issued notice upon the vendors and the purchasers to show-cause why the said transfer made in contravention of Section 54 of the Ordinance be not cancelled. After giving opportunity of hearing to the parties, by order dated 23rd July, 1990, the Deputy Collector held that the said transfer was in contravention of Section 54 of the Ordinance and rule 18 and that the purchasers be evicted from the said land. The said order was confirmed in appeal by the District Collector by his order dated 29th October, 1992. Feeling aggrieved, the respondents preferred the above referred Revision Application No.49/1992 before the Tribunal. The Tribunal was of the opinion that the power of suo motu revision was not exercised by the Deputy

Collector within reasonable time. In the result, the Tribunal was pleased to allow the Revision Application and to set-aside the orders of the authorities below. Therefore, the present petition.

Learned Advocate General Mr.Kamal Trivedi has appeared for the petitioner – State Government. He has submitted that the Ordinance was passed by the State Government. The provisions contained in the Ordinance, therefore, should apply to the lands situated within the State and to the landlords and tenants in respect of such land. He has relied upon the judgments of the Bombay High Court in the matters of **Tukaram Savalaram Panasare v/s. Narayan Balkrishna Dolas** [54 BLR 88] and of **Chhanubhai Karansang v/s. Sardul Mansang** [58 BLR 463]. He has also relied upon the judgments of the Hon'ble Supreme Court in the matters of **Poppatlal Shah, Partner of Messrs.Indo Malayan Trading Co. v/s. The State of Madras, represented by the Deputy Commercial Tax Officer, Sowcarpet, Madras** [AIR 1953 SC 274] and of **Tatoba Bhau Savagave (D) by L.Rs. And another v/s. Vasantrao Dhindiraj Deshpande and others** [AIR 2001 SC 4029].

In the matter of Tukaram Savalaram Panasare (supra), the Hon'ble Court was concerned with the expression 'land' appearing in the Bombay Agricultural Debtors' Relief Act. The Court speaking through Mr.M.C.Chagla, Chief Justice held that, **"...Therefore relief was to be given not merely to a debtor in the Province of Bombay, but to an agricultural debtor in the Province of Bombay, and only that debtor would be an agricultural debtor who cultivated land in the Province of Bombay."** The Court reasoned that, **"...The Legislature was only interested in those people who were cultivating land within its territorial jurisdiction and to whom relief was to be given because they were indebted. It is impossible to believe that the Legislature wanted to give relief to agriculturists from other parts of India merely because they might have become indebted in the Province of Bombay."**

In the matter of Chhanubhai Karansang (supra), a similar provision made in the Bombay Tenancy and Agricultural Lands Act, 1948 was the subject matter

of scrutiny before the Bombay High Court. The Division Bench of the Bombay High Court, speaking through Mr.M.C.Chagla, Chief Justice, held that, **"...The ordinary principle of construction is that a Legislature is dealing with the subject-matter situated within its own territorial jurisdiction.... The tenant for whose benefit the legislation is put on the statute book and who has been defined and the landlord who has been correspondingly defined are tenant and landlord in the State of Bombay. It cannot be gainsaid that the Legislature was only dealing with tenant and landlord within the State of Bombay and not tenant and landlord outside the State of Bombay, and when the Legislature in s.34(2)(a) laid down the limit of fifty acres, it laid down that limit from the point of view of conditions prevailing in the State of Bombay."**

In the matter of Poppatlal Shah (supra) in respect of interpretation of statute, the Hon'ble Supreme Court observed that, **"...It is a settled rule of construction that to ascertain the legislative intent, all the constituent parts of a statute are to**

be taken together and each word, phrase or sentence is to be considered in the light of the general purpose and object of the Act itself."

In the matter of **Tatoba Bhau Savagave** (supra), the Hon'ble Supreme Court referred to the judgment in the matter of **Chhanubhai Karansang v/s. Sardul Mansang** with approval.

Mr.Trivedi has submitted that the same principle shall apply to the provisions contained in the Ordinance and similar meaning be attributed to the word 'agriculturist'.

The petition is contested by Mr.U.A.Trivedi. The main thrust of his defense is the delay in invoking the power of suo motu revision. In support thereof, he has relied upon the judgments in the matters of **Abdul Karim Pirsahab Sheikh v/s. Laxman Bapu Bhosale and others** [AIR 1981 Bombay 168]; of **Mijar Pandulik Shrinivas Bhandari v/s. State of Gujarat** [Special Civil Application No.6096/1991 decided on 6th July, 1999, Coram: M.S.Shah, J.] and of **Mohamad Kavimohamad**

Amin v/s. Fatmabai Ibrahim [(1997)6 SCC 71].

Mr.Trivedi has also filed further affidavit made by the respondent no.1. As stated in the said affidavit, after the purchase of the subject land, the respondents had invested substantial amount for improvement of the land and had used the same for cultivation. Since the judgment of the Tribunal the respondents have sold away the land.

The Ordinance came to be promulgated by the then State of Saurashtra with the avowed objects, "to provide for the settlement of disputes between land-holders and their tenants", "to maintain peace and good government of the State of Saurashtra", "to provide for the settlement of disputes relating to the quantum of Gharkhed land, rent and evictions, between the land-holders and their tenants", for "the improvement of the economic and social conditions of peasants" and for "the full and efficient use of land for agriculture."

By amendment made by the State of Gujarat in

1960 the Ordinance has been made applicable to the Saurashtra area of the State of Gujarat.

Chapter VII of the Ordinance provides for restrictions on transfers of agricultural lands. Section 54 of the Ordinance imposes bar on transfer of land to non-agriculturist. It is this Section 54 which has created hurdle in the respondents' acquiring the subject land. According to the State Government, the respondents are not the agriculturists within the meaning of the Act. They were, therefore, not entitled to purchase the land governed by the Ordinance. According to the respondents they are the agriculturists in as much as they owned agricultural lands situated within the State of Rajasthan. The transfer of agricultural land in favour of the respondents, therefore, cannot be said to be violative to the aforesaid Section 54.

The question that falls for my consideration is, whether the respondents were the agriculturists within the meaning of the Ordinance or whether the transfer of the subject land in favour of the

respondents was in contravention of the aforesaid Section 54.

It is indisputable that the above referred Section 54 does impose a bar on transfer of agricultural lands in favour of the non-agriculturists. It is also not in dispute that the respondents did own agricultural lands within the State of Rajasthan and were agriculturists there. The question is, whether the agriculturist in the State of Rajasthan can be said to be an agriculturist within the meaning of the Ordinance and whether it would be lawful for such agriculturist to purchase agricultural land within the State of Gujarat. For this purpose, it would be expedient to refer to certain definitions in the Ordinance.

Section 2(c) of the Ordinance defines "agriculturist" to mean **"a person who cultivates the land personally"**. Clause (f) thereof defines "to cultivate" to mean **"to carry on any agricultural operation"**. Clause (g) thereof defines "to cultivate personally" to mean **"to cultivate on one's own**

account--

(1)by one's own labour, or

(2)by the labour of any member of one's family, or

(3)by servants on wages payable in cash or kind,

but not in crop-shares or by hired labour, under

one's personal supervision or of any member of

one's family;

Explanation I.- xxxxx xxxxx xxxxx

Explanation II.- xxxxx xxxxx xxxxx”.

Clause (k) thereof defines “land” to mean “**land which is used for agricultural purposes and includes:-**

(a) xxxxx xxxxx xxxxx

(b) xxxxx xxxxx xxxxx”

These definitions disclose that to be an 'agriculturist', a person has to cultivate the land personally i.e. he has to cultivate the land on his own account by his own labour, or by the labour of any member of his family, or by servants on wages payable in cash or kind or by hired labour under his personal supervision or under the supervision of any member of his family.

As held by Mr.Chagla, C.J., a legislature makes enactments in respect of the subject matter within its territorial jurisdiction. Such enactments are made keeping in view the conditions prevailing within the State. Similar is the case here. The object of the Ordinance specifically provides for good government of the State of Saurashtra, settlement of disputes relating to the quantum of Gharkhed land, rent and evictions, etc. between the land-holders and their tenants, for the improvement of the economic and social conditions of peasants and for the full and efficient use of land for agriculture. This necessarily means the land situated within the territories of the State of Saurashtra; the land-holder, the tenant and the dispute in relation to such land; efficient use of such land and the improvement of economic and social conditions of the peasants residing within the territories of the State of Saurashtra. In my opinion, for being 'agriculturist' within the meaning of the Ordinance, a person is required to cultivate the land personally i.e. the land situated within the State of Saurashtra. Hence, in my view, only those persons can

be said to be 'agriculturist', within the meaning of the Ordinance, who personally cultivate the land situated within the State of Saurashtra or for that matter, within the Saurashtra area of the State of Gujarat. The respondents who admittedly did not own any land in the Saurashtra area of the State of Gujarat or within the State of Gujarat cannot be said to be 'agriculturist' within the meaning of the Ordinance. Transfer of the subject land in favour of the respondents was, therefore, hit by Section 54 of the Ordinance. The authorities below had rightly held that the transfer of the subject land in favour of the respondents was in contravention of Section 54 of the Ordinance.

Though I am of the opinion that the respondents were not 'agriculturist' within the meaning of the Ordinance and that the transfer of the subject land in their favour was made in contravention of Section 54 of the Ordinance, I shall not interfere with the order of the Tribunal for the reason that there has been an unexplained delay at the end of the Deputy Collector, Gondal in invoking the power of suo motu

revision. As noted above, the relevant revenue entries were made on 21st April, 1986. The certification thereof was refused by the Circle Officer as early as on 25th July, 1986. Nevertheless, the Deputy Collector did not exercise the power of revision until April, 1990 i.e. for nearly three years. This delay has not been explained by the petitioner State Government. Further, since the impugned order made by the Tribunal on 17th February, 1995, the respondents have sold the land in the month of December, 1995. In other words, before the present petition was filed in this Court, the subject land was sold away by the respondents.

For the aforesaid reasons, the petition is dismissed. Rule is discharged. The parties will bear their own cost.

(Ms. R.M.Doshit, J.)

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